

Authorization ID: **MLD070008R**  
Contact ID: **MAMMOTH LAKES PACK**  
Expiration Date: **12/31/2028**  
Use Code: **133**

FS-2700-5c (03/06)  
OMB No. 0596-0082  
Ph# **934-2434(S); (760764-2450 (W))**

**U.S. DEPARTMENT OF AGRICULTURE**  
**Forest Service**  
**RESORT/MARINA**  
**TERM SPECIAL USE PERMIT**  
**AUTHORITY: OCCUPANCY PERMITS, AS AMENDED March 4, 1915**

**JOHN SUMMERS dba MAMMOTH LAKES PACK OUTFIT, P.O. BOX 61, MAMMOTH LAKES, CA 93546**, (hereafter "holder") is hereby authorized to use and occupy National Forest System lands and waters on the **Inyo and Sierra National Forests** for the purposes of constructing, operating, and maintaining a resort/marina, including food service, retail sales, and other ancillary facilities described herein, known as the **Mammoth Lakes Pack Outfit resort/marina**, and subject to the provisions of this resort/marina term special use permit (hereafter "permit"). This permit within **SE1/4 SW 1/4 Section 9, T.4S., R.27E., (Mammoth Lakes Pack Outfit), MT. DIABLO PRINCIPAL MERIDIAN**, covers **13.91 acres** described here and as shown on the attached maps **(Exhibit A, pgs. 1-2) dated 06/06/07**.

The following improvements, whether on or off the site, are authorized:

**Refer to Schedule C for a list of Authorized Facilities. The holder is responsible for the operation and maintenance of all facilities and improvements authorized in this permit. Refer to Schedule B for a list of Authorized Services. The holder is authorized to use the following Wilderness Areas: Ansel Adams, John Muir, South Sierra and Golden Trout. Refer to Exhibit D (attached to and made a part of this permit) for descriptions of outfitter/guide use limits (herd size, party & stock size limits, destination quotas, designated stock holding camps & spot/dunnage sites, authorized non-wilderness use and grazing utilization). The holder is authorized to use the following Non-Wilderness Areas: (see schedule B)**

**In accordance with the Programmatic Agreement Among the Pacific Southwest Region, USDA Forest Service, California State Historic Preservation Officer, Nevada State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding the Identification, Evaluation, & Treatment of Historic Properties within the Area of Potential Effect of pack Station Operations & One Outfitter Guide Operation on the Inyo and Sierra National Forest, California & Nevada (PA), Mammoth Lakes Pack Outfit facilities will be managed as historic properties until a historic evaluation is completed. A Historic Properties Management Plan developed per the terms of the PA shall become part of the permit (Exhibit C).**

**Attached Clauses.** This permit is accepted subject to the conditions set forth herein on **pages 1 through 34, and Exhibits A through E** attached or referenced hereto and made a part of this permit.

**I. AUTHORITY AND GENERAL TERMS OF THE PERMIT**

**A. AUTHORITY.** This permit is issued under the authority of the Act of March 4, 1915, as amended (16 U.S.C. 497), and 36 CFR Part 251, Subpart B, as amended. This permit and the activities or use authorized shall be subject to the terms and conditions of the Secretary's regulations and any subsequent amendment to them.

**B. AUTHORIZED OFFICER.** The authorized officer is the Forest Supervisor or a delegated subordinate officer.

**C. RULES, LAWS, AND ORDINANCES.** The holder in exercising the privileges granted by this term permit shall comply with all present and future Federal laws and regulations and all present and future state, county, and municipal laws, ordinances, and regulations that apply to the area or operations covered by this permit, to the extent they do not conflict with Federal law, policy, or regulation. The Forest Service assumes no responsibility for enforcing laws, regulations, ordinances, and the like that fall under the jurisdiction of other governmental entities.

#### D. TERM

Unless sooner terminated or revoked by the authorized officer, in accordance with the provisions of the permit, this permit shall terminate on **12/31/2028** but a new special use permit to occupy and use the same National Forest land may be granted provided the holder shall comply with the then-existing laws and regulations governing the occupancy and use of National Forest lands. The holder shall notify the authorized officer in writing not less than six (6) months prior to said date that such new authorization is desired.

E. NON-EXCLUSIVE USE. Unless expressly provided in additional terms, this permit is not exclusive. The Forest Service reserves the right to use or allow others to use any part of the permit area for any purpose.

F. AREA ACCESS. Except for any restrictions as the holder and the authorized officer may agree to be necessary to protect the installation and operation of authorized structures and developments, the lands and waters covered by this permit shall remain open to the public for all lawful purposes. To facilitate public use of this area, all existing roads, or roads as may be constructed by the holder, shall remain open to the public, except for roads as may be closed by joint agreement of the holder and the authorized officer.

#### G. PERIODIC REVISION

1. The terms of this permit shall be subject to revision to reflect changing times and conditions to incorporate land use allocation decisions made as a result of revision to Forest Land and Resource Management Plans.
2. At the sole discretion of the authorized officer, this term permit may be amended to remove authorization to use any National Forest System lands not specifically covered in the Master Development Plan and/or not needed for the use and occupancy authorized by this permit.
3. The activities authorized by this permit have been the subject of prior and current litigation in High Sierra Hikers v. Blackwell, No. C-00-1239-EDL (X.D. Cal.), and may be the subject of future litigation. The authorized officer may modify, suspend, or withdraw approval for those activities as a result of current and future litigation. Notwithstanding any other provisions of this permit, modification, suspension, or withdrawal of approval of authorized activities under this clause shall not give rise to any claim for damages or any other relief by the holder against the Forest Service, provided that if as a result of current or future litigation the authorized officer completely revokes the permit by withdrawing approval for all authorized activities, both inside and outside of wilderness areas, the remedies in clause IX.C shall apply. Under no circumstances shall the holder be compensated for a partial revocation or for a constructive taking of the improvements authorized by this permit.

## II. IMPROVEMENTS

A. MASTER DEVELOPMENT PLAN. In consideration of the privileges authorized by this permit, the holder agrees to prepare and submit changes in the Master Development Plan encompassing the entire commercial resort/marina presently developed within the National Forest lands authorized by this permit, and in a form acceptable to the Forest Service. Additional construction beyond maintenance of existing improvements shall not be authorized until this plan has been amended. Planning should encompass all the area authorized for use by this permit. The accepted Master Development Plan shall become a part of this permit.

B. PERMIT LIMITATIONS. Nothing in this permit allows or implies permission to build or maintain any structure or facility, or to conduct any activity unless specifically provided for in this permit. Any use not specifically identified in this permit must be approved by the authorized officer in the form of a new permit or permit amendment.

C. SITE DEVELOPMENT SCHEDULE. As part of this permit, a schedule for the progressive development of the permitted area and installation of facilities shall be prepared jointly by the holder and the Forest Service. Such a schedule shall set forth an itemized priority list of planned improvements and the due date for completion. This schedule shall be made a part of this permit. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met; and provided further, that all priority installation authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the schedule due date.

1. All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least 45 days before the construction date stipulated in the development schedule.

2. In the event there is agreement with the Forest Service to expand the facilities and services provided on the areas covered by this permit, the holder shall jointly prepare with the Forest Service a development schedule for the added facilities prior to any construction and meet the requirements of clause II.E. Such schedule shall be made a part of this permit.

D. PLANS. All plans for development, layout, construction, reconstruction or alteration of improvements on the site, as well as revisions of such plans, must be prepared by a licensed engineer, architect, and/or landscape architect (in those states in which such licensing is required) or other qualified individual acceptable to the authorized officer. Such plans must be accepted by the authorized officer before the commencement of any work. A holder may be required to furnish as-built plans, maps, or surveys upon the completion of construction.

E. AMENDMENT. This permit may be amended to cover new, changed, or additional uses(s) or areas not previously considered. In approving or denying changes or modifications, the authorized officer shall consider, among other things, the findings or recommendations of other involved agencies and whether their terms and conditions of the existing permit may be continued or revised, or a new permit issued.

### **III. OPERATIONS AND MAINTENANCE**

A. CONDITIONS OF OPERATIONS. The holder shall maintain the improvements and premises to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer. Standards are subject to periodic change by the authorized officer. This use shall be in normal operation at least **90 days** each year or season. Failure of the holder to exercise this minimum use may result in revocation under clause IX.A.

B. OPERATING PLAN. The holder or designated representative shall prepare and annually revise by **April 1st** an Operating Plan. The plan shall be prepared in consultation with the authorized officer or designated representative and cover all operations, regardless of season, as appropriate. The provisions of the operating plan and the annual revisions shall become a part of this permit and shall be submitted by the holder and approved by the authorized officer or their designated representative prior to commencing operations. The plan shall outline the holder's activities that will protect public health and safety and the environment and shall include sufficient detail and standards to enable the Forest Service to monitor operations for compliance.

The authorized officer may require a joint annual business meeting agenda to:

1. Update gross fixed assets (GFA) when the permit fee is calculated under the graduated rate fee system (GRFS).
2. Determine need for performance bond for construction projects and amount of bond.
3. Provide annual use reports.

C. INSPECTION BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permitted facilities and improvements at any time for compliance with the terms of this permit. The obligations of the holder under this permit are not contingent upon any duty of the Forest Service to inspect the premises. A failure by the Forest Service or other governmental officials to inspect is not a defense to noncompliance with any of the terms and conditions of this permit.

D. REMOVAL AND PLANTING OF VEGETATION. This permit does not authorize the cutting of timber or other vegetation. Trees or shrubbery may be removed or destroyed only after the authorized officer, or authorized officer's agent, has approved, and has marked or otherwise designated that which may be removed or destroyed. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the National Forest. The Forest Service reserves the right to dispose of the merchantable timber to others than the holder at no stumpage cost to the holder. Unmerchantable material shall be disposed of as directed by the authorized officer. Trees, shrubs, and other plants may be planted in such manner and in such places about the premises as approved by the authorized officer.

E. SIGNS. Signs or advertising devices erected on National Forest lands shall have prior approval by the Forest Service as to location, design, size, color, and message. Erected signs shall be maintained or renewed as necessary to neat and presentable standards, as determined by the Forest Service.

F. NONDISCRIMINATION.

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational activities), national origin, age, or disability or by curtailing or refusing to furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the holder and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975, as amended.

2. The holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit.

3. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed at the public entrance to the premises and at other exterior or interior locations, as directed by the Forest Service.

4. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the State in which the violation occurs.

G. EQUAL ACCESS TO FEDERAL PROGRAMS. In addition to the above nondiscrimination policy, the holder agrees to insure that its programs and activities are open to the general public on an equal basis and without regard to any non-merit factor.

#### **IV. RIGHTS AND LIABILITIES**

A. LEGAL EFFECT OF THE PERMIT. This permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

B. THIRD-PARTY RIGHTS. This permit is subject to all valid rights and claims of third parties. The United States is not liable to the holder for the exercise of any such right or claim.

C. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this permit do not intend to confer any rights on any third party as a beneficiary under this permit, including any party who has responsibility for any day-to-day activities authorized by this permit, if approved by the authorized officer under clause VIII.

D. INDEMNIFICATION OF THE UNITED STATES. The holder shall indemnify, defend, and hold the United States harmless for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the holder in connection with the use and occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and occupancy authorized by this permit which result in: (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause XIII.A of this permit; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment.

E. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from injury and damage the land, property, and other interest of the United States. Damage includes but is not limited to fire suppression costs and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. For purposes of clauses IV.E and XIII, "hazardous material" shall mean any hazardous substance, pollutant, contaminant, hazardous waste, oil, and/or petroleum product, as those terms are defined under any Federal, State, or local law or regulation.

1. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the site. If the environment or any government property covered by this permit becomes damaged during the holder's use and occupancy of the site, the holder shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

2. The holder shall indemnify the United States for any damages arising out of the holder's use and occupancy authorized by this permit. The holder shall be liable for all injury, loss, or damage, including fire suppression, or other

costs associated with rehabilitation or restoration of natural resources, associated with the holder's use or occupancy. Compensation shall include but is not limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs in connection therewith. Such costs may be deducted from the performance bond required under clause XIV.G.

3. With respect to roads, the holder shall be liable for damages to all roads and trails of the United States open to public use caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to the same extent as provided under clause IV.E.1, except that liability shall not include reasonable and ordinary wear and tear.

F. RISKS. The holder assumes all risk of loss of the property. Loss to the property may result from, but is not limited to, theft, vandalism, fire and any firefighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the authorized improvements are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

G. HAZARDS. The holder has a continuing responsibility to identify and abate hazardous conditions in the permit area which could affect the improvements or pose a risk of injury to individuals. The holder shall consult with the authorized officer before taking any action to abate such hazards.

H. INSURANCE. The holder shall have in force public liability insurance covering property damage and damage to persons in the event of death or injury in the minimum amount of \$1,000,000.00 combined single limits (CSL). These minimum amounts and terms are subject to change at the sole discretion of the authorized officer on the annual anniversary date of this authorization. The coverage shall extend to property damage, bodily injury, or death arising out the holder's activities under the permit including, but not limited to, occupancy or use of the land and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the permit. Such insurance shall also name the United States as an additional insured. The Forest Service reserves the right to review and approve the insurance policy prior to issuance. The holder shall send an authenticated copy of its insurance policy to the Forest Service immediately upon issuance of the policy. The policy shall specify that the insurance company shall give 30 days prior written notice to the Forest Service of cancellation or any modification of the policy.

**V. FEES**

A. HOLDER TO PAY FAIR MARKET VALUE FOR THE PERMITTED USE. The holder shall pay fair market value for the use of National Forest System lands as determined by GRFS.

1. The provisions of GRFS identified under this permit may be revised by the Forest Service to reflect changed times and conditions. Changes shall become effective when:

- (a) mutually agreed;
- (b) the permit is amended for other purposes; or
- (c) a new permit is issued (including after termination of this permit).

2. GRFS may be replaced in its entirety by the Chief of the Forest Service if a new generally applicable fee system is imposed affecting all holders of authorizations under 16 U.S.C. 497. Replacement shall become effective on the beginning of the holder's business year.

3. Allocation of GFA and Sales. For purposes of the calculation, GFA will be adjusted as follows: Full value will be allowed for assets used solely to generate sales for permitted operations. No value will be given for assets used solely to generate sales for private operations. Assets used jointly to generate sales for private and permitted operations will be allocated on a basis of use. All GFA will be shown on the depreciation schedule.

B. FEES - GRFS. The annual fees due the United States for those activities authorized by this permit shall be calculated on sales according to the following schedule:

Kind of Business	Break-even point (Sales to GFA) (Percentage)	Rate Base (Percentage)	Balance of Sales Rate (Percentage)
Grocery	70	.75	1.13
Service, Food	70	1.25	1.88

Service, Car	70	1.30	1.95
Merchandise	70	1.50	2.25
Service, Liquor	60	1.80	2.70
Outfitting/Guiding	50	2.00	3.00
Rental and Services	30	4.50	6.75
Lodging	40	4.00	6.00

1. A weighted-average break-even point (called the break-even point) and a weighted-average rate base (called the rate base) shall be calculated and used when applying the schedule to mixed business. If the holder's business records do not clearly segregate the sales into the business categories authorized by this permit, they shall be placed in the most logical category. If sales with a different rate base are grouped, place them all in the rate category that shall yield the highest fee. Calculate the fee on sales below the break-even point using 50 per cent of the rate base. Calculate the fee on sales between the break-even point and twice the break-even point using 150 percent of the rate base. Calculate the fee on sales above twice the break-even point using the balance of sales rate.

2. The minimum annual fee for this use, which is due in advance and is not subject to refund, shall be equal to the fee that would result when sales are 40 percent of the break-even point. This fee shall be calculated and billed by the Forest Service during the final quarter of the holder's fiscal year, using the most recent GFA figure and previously reported sales data for the current year, plus, if the operating season is still active, estimated sales for the remainder of the year.

**C. DEFINITIONS OF SALES CATEGORIES AND GFA.**

1. Sales Categories. For purposes of recording and reporting sales, and sales-related information including the cost of sales, the activities of the concessionaire are divided into:

Grocery. Includes the sale of items usually associated with grocery stores such as staple foods, meats, produce, household supplies. Includes the sale of bottled soft drinks, beer and wine, when included in the grocery operation.

Service, Food. Includes the serving of meals, sandwiches, and other items either consumed on the premises or prepared for carry out. Snack bars are included.

Service, Cars. Includes servicing and the sale of fuels, lubricants, and all kinds of articles used in servicing and repairing autos, boats, jet skis, aircraft.

Merchandise. Includes the sale of clothing, souvenirs, gifts, ski and other sporting equipment. Where a "Service, Cars" category of business is not established by this permit, the sale of auto accessories is included in this category.

Service, Liquor. Includes the sale of alcoholic drinks for consumption on the premises and other sales ordinarily a part of a bar or cocktail lounge business. Where a bar is operated in conjunction with a restaurant or overnight accommodations, liquor, beer and wine sales shall be accounted for consistent with holder's normal business practice. The sale of alcoholic beverages for consumption off the premises is also included in this item, except as indicated in "Grocery."

Outfitting/Guiding. Includes all activities or commercial guiding services regardless of mode of travel, when associated with a resort or marina with a mixture of business. All fees charged are considered sales.

Lodging. Includes lodging where daily maid service is furnished.

Rentals and Services. Includes lodging where daily maid service is not furnished by the holder; the rental of camping space, ski equipment and other equipment rentals and services. Also included are services such as barbershops, and amusements including video games.

2. GFA. The capitalized cost of improvements, equipment, and fixtures necessary and used to generate sales and other revenue during the permit year on the permitted area or within the development boundary shown in this permit.

GFA shall be established by and changed at the sole discretion of the authorized officer based on the current interpretation of guidelines supporting GRFS.

(a) Valuing GFA. The value of GFA shall be the cost of each qualifying asset as reflected in the financial statements of the current holder. This is the same amount as shown on the holder's fixed asset depreciation schedule which supports the general ledger prepared in accordance with generally accepted accounting principles (GAAP). Include in GFA, when identified by the holder and approved by the authorized officer, costs which are expensed by the holder as payment to

utility companies for constructing and installing utilities to the area to the extent they are necessary for the generation of sales. Costs for user surcharge or demand rates are not included as GFA.

If fixed assets have not been assigned a value by the holder at the time a permit is issued, the value for GFA must be determined by the holder and provided to the authorized officer no later than the end of the new holder's first financial reporting period.

(b) Revaluing GFA. Revalue GFA when events result in a change or restatement of fixed assets on the holder's official accounting records, prepared in accordance with GAAP. Examples of events that may cause the holder to restate the value of fixed assets include, but are not limited to:

- (1) Sale of assets or common stock which results in a change in ownership, or controlling interest;
- (2) Mergers or other business combinations;
- (3) Leveraged buy outs, and acquisitions; or
- (4) Other events, either voluntary or involuntary, which trigger a revaluation of capitalized assets associated with the authorized use.

When the holder reports a change in the value of assets due to a restatement of the value of those assets, an audit may be necessary to validate the new GFA. Any adjustment in fees shall be retroactive to the time the change in asset value occurred.

(c) The following, and similar items, are not part of GFA:

- (1) Assets that ordinarily qualify for inclusion in GFA, but which are out of service for the full operating year for which fees are being determined.
- (2) Land.
- (3) Expendable or consumable supplies.
- (4) Intangible assets, such as goodwill, permit value, organization expenses, and liquor licenses.
- (5) Improvements not related to the operation.
- (6) Luxury assets, to the extent their design and cost exceed functional need.
- (7) The prorata share of GFA assets in off-site activities not directly associated with the authorized use.
- (8) Expensed assets.
- (9) Operating leases.

(d) Initial GFA. As of the date of this permit, 03/26/2008 the initial GFA under this ownership has been determined to be \$532,133.10 Amount as shown in detail on Schedule A attached to this permit. If an error is found in the GFA amount, it shall be changed to the correct amount retroactive to the date the error occurred and fees adjusted accordingly.

D. CHANGE OF GFA UPON SALE OR CHANGE IN CONTROLLING INTEREST. Upon change of ownership, effective dominion or controlling interest or upon sale of assets or common stock which results in a change of ownership, effective dominion, or controlling interest, the value of GFA shall be established applying GAAP.

E. DETERMINING SALES AND OTHER REVENUE. Sales and GFA shall be derived from all improvements and facilities, including those of applicable third parties, which constitute a logical single overall integrated business operation regardless of the land ownership. A map shall be prepared designating the development boundary and may be augmented by narrative or table and shall become a part of this permit.

1. Sales. Fees shall be assessed against all receipts from sales unless specifically exempted. Sales for the purpose of fee calculation include; (1) all revenue derived from goods and services sold which are related to operations under this

permit and all revenue derived within the development boundary, unless otherwise excluded; (2) the value of goods and services traded-off for goods and services received (bartering); and (3) the value of gratuities.

(a) Definitions.

(1) Gratuities. Goods, services or privileges that are provided without charge or at deep discount to such individuals as employees, owners, and officers, or immediate families of employees, owners and officers, and not available to the general public.

(2) Acceptable Discounts. Transactions for goods or services below stated, listed or otherwise presented prices to the public at large. Included are such things as group sales and organized programs. These are included in sales at the actual transaction price.

(3) Discriminatory Pricing. Rates based solely on residence, race, color or religion. Discounts based on age or disability are not discriminatory pricing.

(4) Preferential Discounts. Discounts offered to certain classes or individuals based on their status, such as members of boards of directors, contractors, advertisers, doctors, and VIPs.

(5) Market Price. The price generally available to an informed public excluding special promotions. It may not be the "window price."

(6) Bartering or Trade Offs. The practice of exchanging goods or services between individuals or companies.

(7) Commissions. Commissions are payments received by the holder for collecting revenue on behalf of others as an agent or providing services not directly associated with the operations, such as selling hunting and fishing licenses, bus or sight-seeing tickets for trips off or predominantly off the permitted area, accommodating telephone toll calls, etc.

(8) Franchise Receipts. These are payments made to specific holders by third parties solely for the opportunity to do business at a specific location. The holder provides little, if anything, in the way of facilities or services. They may be the only fee paid to the holder or, if some facilities or services are provided by the holder, they may be made in addition to a rental fee. The franchise receipts may be in the form of fixed amounts of money or in reduced prices for the franchiser's product or service.

(b) Inclusions. The following items shall be included as gross receipts to arrive at sales:

(1) Gratuities. Daily and season passes are valued at market price unless the permit holder has sufficient records of daily individual use to substantiate a "value of use". Value of Use is the number of days the pass is used times the market price. Does not include employees. See (4) below).

(2) Preferential Discounts. Includes the amount that would have been received had the transaction been made at the market price.

(3) Value of Discriminatory Pricing. Discriminatory pricing is disallowed. Include the amount that would have been received had the transaction been made at the market price.

(4) Employee discounts in excess of 30 percent of market price. These discounts are exclusively given or provided to employees, owners, officers or immediate families of employees, owners or officers are gratuities and are included in sales at 70 percent of market price. Employee discounts less than 30 percent are recorded at transaction price.

(5) Value of bartered goods and services (trade-offs)

(6) Gross sales of third parties. Includes sales of State controlled liquor stores.

(7) Fifty percent of franchise receipts.

(8) All other revenue items not specifically excluded below shall be included as sales.

(c) Exclusions. The following items shall be excluded from gross receipts or revenue to arrive at sales:

(1) Value of goods and services provided to employees, agents, contractors or officials to facilitate the accomplishment of their assigned duties or work-related obligation or to others for educational or technical competence related to the type of permitted use such as boat operation, ski patrol, water safety, etc. Similarly, local, State and Federal government officials including Forest Service employees who in the course of their oversight responsibilities or otherwise on official business use goods or services. The holder is not required to report the value of such duty-related or official use as sales for fee calculation purposes.

(2) The value of meals and lodging furnished by an employer to an employee for the employer's convenience if, in the case of meals, they are furnished on the employer's business premises. The fact that the employer imposes a partial charge for or that the employee may accept or decline meals does not affect the exclusion if all other conditions are met. If employer imposes a charge for meals and lodging it shall be included at transaction price. The holder need not keep records of employee meals and lodging more detailed than those required by the Internal Revenue Service.

(3) Refunds from returned merchandise and receipts from sales of real and nonrental personal property used in the operation.

(4) Rents paid to the holder by third parties, even if based on sales.

(5) Taxes collected on site from customers, accounted for as such in the holder's accounting records, and that were paid or are payable to taxing authorities. Taxes included in the purchase price of gasoline, tobacco and other products, but paid to the taxing authority by the manufacturer or wholesaler are included in sales, and subject to the permit fee.

(6) Amounts paid or payable to a Government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

(7) Value of sales and commissions where the holder is serving as an agent for businesses not directly associated with the permitted operation. This includes such things as bus or sight-seeing-ticket sales for trips not related to activities on the permitted area, telephone-toll charges, and accident-insurance sales.

(8) Sales of operating equipment. Rental equipment, capitalized assets or other assets used in operations shall be excluded from gross receipts. Examples are such items as used rental skis, boats, and motors which are sold periodically and replaced.

F. CONCESSION PAYMENT, GRFS. Reports and deposits required as outlined above shall be tendered in accordance with the schedule below. They shall be sent or delivered to the Collection Officer, USDA, Forest Service, at the address furnished by the Forest Supervisor. Checks or money orders shall be payable to "USDA, Forest Service."

1. The holder shall report sales, calculate fees due and make payment each calendar quarter except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the 30th of the month following the end of each reportable period.

2. Prior to January 31<sup>st</sup> each year the authorized officer shall furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item 1), such rate to be one that shall produce the expected fee based on past experience. The correct fee shall be determined at the end of the year and adjustment made as provided under item (5). Any balance that may exist shall be credited and applied against the next payment due.

3. During the final fiscal month, pay within 30 days of billing by the Forest Service, the annual minimum fee for the next year.

4. The holder must also provide within three months after close of this operating year a balance sheet representing its financial condition at the close of its business year, an annual operating statement reporting the results of operations including year end adjustments for itself and each sublessee for the same period, and a schedule of GFA adjusted to comply with the terms of this permit in a format and manner prescribed by the authorized officer.

If the holder fails to report all sales in the period they were made or misreports GFA and the authorized officer determines that additional fees are owed, the holder shall pay the additional fee plus interest. Such interest shall be assessed at the rate specified in clause V.G. and shall accrue from the date the sales or correct GFA should have been reported and fee paid until the date of actual payment of the underpaid fee.

(1) Value of goods and services provided to employees, agents, contractors or officials to facilitate the accomplishment of their assigned duties or work-related obligation or to others for educational or technical competence related to the type of permitted use such as boat operation, ski patrol, water safety, etc. Similarly, local, State and Federal government officials including Forest Service employees who in the course of their oversight responsibilities or otherwise on official business use goods or services. The holder is not required to report the value of such duty-related or official use as sales for fee calculation purposes.

(2) The value of meals and lodging furnished by an employer to an employee for the employer's convenience if, in the case of meals, they are furnished on the employer's business premises. The fact that the employer imposes a partial charge for or that the employee may accept or decline meals does not affect the exclusion if all other conditions are met. If employer imposes a charge for meals and lodging it shall be included at transaction price. The holder need not keep records of employee meals and lodging more detailed than those required by the Internal Revenue Service.

(3) Refunds from returned merchandise and receipts from sales of real and nonrental personal property used in the operation.

(4) Rents paid to the holder by third parties, even if based on sales.

(5) Taxes collected on site from customers, accounted for as such in the holder's accounting records, and that were paid or are payable to taxing authorities. Taxes included in the purchase price of gasoline, tobacco and other products, but paid to the taxing authority by the manufacturer or wholesaler are included in sales, and subject to the permit fee.

(6) Amounts paid or payable to a Government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.

(7) Value of sales and commissions where the holder is serving as an agent for businesses not directly associated with the permitted operation. This includes such things as bus or sight-seeing-ticket sales for trips not related to activities on the permitted area, telephone-toll charges, and accident-insurance sales.

(8) Sales of operating equipment. Rental equipment, capitalized assets or other assets used in operations shall be excluded from gross receipts. Examples are such items as used rental skis, boats, and motors which are sold periodically and replaced.

F. CONCESSION PAYMENT, GRFS. Reports and deposits required as outlined above shall be tendered in accordance with the schedule below. They shall be sent or delivered to the Collection Officer, USDA, Forest Service, at the address furnished by the Forest Supervisor. Checks or money orders shall be payable to "USDA, Forest Service."

1. The holder shall report sales, calculate fees due and make payment each calendar **quarter** except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shutdown for a specific period. Reports and payments shall be made by the 30th of the month following the end of each reportable period.

2. Prior to **January 31<sup>st</sup> each year** the authorized officer shall furnish the holder with a tentative rate which shall be applied to sales in the fee calculation (item 1), such rate to be one that shall produce the expected fee based on past experience. The correct fee shall be determined at the end of the year and adjustment made as provided under item (5). Any balance that may exist shall be credited and applied against the next payment due.

3. During the final fiscal month, pay within 30 days of billing by the Forest Service, the annual minimum fee for the next year.

4. The holder must also provide within three months after close of this operating year a balance sheet representing its financial condition at the close of its business year, an annual operating statement reporting the results of operations including year end adjustments for itself and each sublessee for the same period, and a schedule of GFA adjusted to comply with the terms of this permit in a format and manner prescribed by the authorized officer.

If the holder fails to report all sales in the period they were made or misreports GFA and the authorized officer determines that additional fees are owed, the holder shall pay the additional fee plus interest. Such interest shall be assessed at the rate specified in clause V.G. and shall accrue from the date the sales or correct GFA should have been reported and fee paid until the date of actual payment of the underpaid fee.

5. Within 30 days of receipt of a statement from the Forest Service, pay any additional fee required to correct fees paid for the past year's operation.
6. All fee calculations and records of sales and GFA are subject to periodic audit. Errors in calculation or payment shall be corrected as needed for conformance with those audits. Additional fees and interest due as a result of such audits shall be in accordance with item 4, paragraph 2.
7. Correction of errors includes but is not limited to any action necessary to establish the cost of gross fixed assets to the current holder, including sales, or other data required to accurately assess and calculate fees. For fee calculation purposes, error may include:
  - (a) Misreporting or misrepresentation of amounts.
  - (b) Arithmetic mistakes.
  - (c) Typographical mistakes.
  - (d) Variation from GAAP, when such variations are inconsistent with the terms and conditions of this permit.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, with past fees adjusted accordingly. Changes effected by agency policy, including definition of assets included in GFA, shall only be made prospectively.

#### G. FEE PAYMENT ISSUES.

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.
2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by settlement terms or an appeal decision.
3. Late Payments
  - (a) Interest. Pursuant to 31 U.S.C. 3717 et seq., interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.
  - (b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.
  - (c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.
  - (d) Termination for Nonpayment. This permit shall terminate without the necessity of prior notice and opportunity to comply when any permit fee payment is 90 calendar days from the due date in arrears. The holder shall be responsible for the delinquent fees, as well as any other costs of restoring the site to its original condition, including hazardous waste cleanup.
4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 et seq. and common law. Delinquencies are subject to any or all of the following:
  - (a) Administrative offset of payments due the holder from the Forest Service.
  - (b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).
  - (c) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 et seq.
  - (d) Disclosure to consumer or commercial credit reporting agencies.

H. ACCESS TO RECORDS. For the purpose of administering this permit (including ascertaining that fees paid were correct and evaluating the propriety of the fee base), the holder agrees to make all of the accounting books and supporting records to the business activities, as well as those of sublessees operating within the authority of this permit,

available for analysis by qualified representatives of the Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information so obtained shall be treated as confidential as provided in regulations issued by the Secretary of Agriculture.

The holder shall retain the above records and keep them available for review for 5 years after the end of the year involved, unless disposition is otherwise approved by the authorized officer in writing.

I. ACCOUNTING RECORDS. The holder shall follow GAAP or other comprehensive bases of accounting acceptable to the Forest Service in recording financial transactions and in reporting results to the authorized officer. When requested by the authorized officer, the holder at own expense, shall have the annual accounting reports audited or prepared by a licensed independent accountant acceptable to the Forest Service, and shall furnish the authorized officer a complete copy of the report. The holder shall require sublessees to comply with these same requirements. The minimum acceptable accounting system shall include:

1. Systematic internal controls and recording by kind of business the gross receipts derived from all sources of business conducted under this permit. Receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be supported by source documents such as cash register tapes, sale invoices, rental records, and cash accounts from other sources.
2. A permanent record of investments in facilities (depreciation schedule) current source documents for acquisition costs of capital items.
3. Preparation and maintenance of such special records and accounts as may be specified by the authorized officer.
4. Bank accounts will be maintained separately for the businesses conducted under this permit and not commingled with those for other businesses of the holder.

**VI. TRANSFER OF TITLE TO THE IMPROVEMENTS**

A. NOTIFICATION OF TRANSFER. The holder shall notify the authorized officer when a transfer of title to the improvements is contemplated.

B. TRANSFER OF TITLE. Any transfer of title to the improvements covered by this permit, with the exception of boats owned by the holder, shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. Issuance of a new permit to the party who acquires title to the improvements shall be at the sole discretion of the authorized officer. The authorized officer shall determine that the applicant meets requirements under Federal regulations.

**VII. CHANGE IN CONTROL OF THE BUSINESS ENTITY**

A. NOTIFICATION OF CHANGE IN CONTROL. The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is contemplated. If the holder is a corporation, change of control means the sale or transfer of at least 50 percent of the corporate stock. If the holder is a partnership, change of control means the sale or transfer of a 50 percent or greater interest in the partnership. If the holder is an individual, change of control means the sale or transfer of the business to another party.

B. CHANGE IN CONTROL. Any change in control of the business entity as defined in clause VII.A. shall result in termination of this permit. The party acquiring control of the business entity must submit an application for a special use permit. Issuance of a new permit shall be at the sole discretion of the authorized officer. The authorized officer shall determine whether the applicant meets the requirements established by Federal regulations.

**VIII. RESPONSIBILITY FOR DAY-TO-DAY ACTIVITIES**

As a general rule, the holder shall conduct the day-to-day activities authorized by this permit. Some but not all of these activities may be conducted by a party other than the holder, but only with prior written approval of the authorized officer. The holder shall continue to be responsible for compliance with all the terms of this permit.

**IX. REVOCAION AND SUSPENSION**

A. REVOCAION OR SUSPENSION. The Forest Service may suspend or revoke this permit in whole or part for:

1. Noncompliance with Federal, State, or local laws and regulation.
2. Noncompliance with the terms and conditions of this permit.
3. Reasons in the public interest.
4. Abandonment or other failure of the holder to exercise the privileges granted.

B. OPPORTUNITY TO TAKE CORRECTIVE ACTION. Prior to revocation or suspension under clause IX.A, the authorized officer shall give the holder written notice of the grounds for each action and a reasonable time, not to exceed 90 days, to complete the corrective action prescribed by the authorized officer.

C. REVOCAION FOR REASONS IN THE PUBLIC INTEREST. If during the term of this permit or any extension thereof the Secretary of Agriculture or any official of the Forest Service with delegated authority determines in planning for the uses of the National Forest System that the public interest requires revocation of this permit, this permit shall be revoked after 30 days' written notice to the holder. The United States shall then have the right to purchase the holder's improvements, to remove them, or to require the holder to remove them, and the United States shall be obligated to pay an equitable consideration for the improvements or for removal of the improvements and damages resulting from their removal. If the amount of consideration is fixed by mutual agreement between the United States and the holder, that amount shall be accepted by the holder in full satisfaction of all claims against the United States under this clause. If mutual agreement is not reached, the Forest Service shall determine the amount of consideration. If the holder is dissatisfied with the amount determined by the Forest Service, the holder may appeal the determination under the agency's administrative appeal regulations.

D. SUSPENSION. The authorized officer may immediately suspend this permit, in whole or in part, when necessary to protect public health, safety, or the environment. The suspension decision must be in writing. Within ten days of the request of the holder, the superior of the authorized officer shall arrange for an on-the-ground review of the adverse conditions with the holder. Following this review the superior shall take prompt action to affirm, modify, or cancel the suspension.

## **X. RENEWAL**

This permit does not provide for renewal. Prior to termination of this permit, the holder may apply for a new permit that would renew the use and occupancy authorized by this permit. Renewal of the use and occupancy authorized by this permit shall be at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this permit, the authorized officer shall require that: (1) the use and occupancy to be authorized by the new permit is consistent with the standards and guidelines in the Forest Land and Resource Management Plan; (2) the type of use and occupancy to be authorized by the new permit is the same as the type of use and occupancy authorized by this permit; and (3) the holder is in compliance with all the terms of this permit.

## **XI. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT RENEWAL**

Except as provided in clause IX.C., upon revocation of this permit or termination of this permit without renewal of the authorized use, the authorized officer has the discretion to require the holder to sell or remove all structures and improvements, except those owned by the United States, within a reasonable time prescribed by the authorized officer and to restore the site to the satisfaction of the authorized officer. If the holder fails to sell or remove all structures or improvements within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all cost associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the site.

## **XII. HEALTH AND SAFETY**

### **A. BOATING SAFETY**

Not applicable.

B. SANITATION. The operation and maintenance of all sanitation, food service, and water-supply methods, systems, and facilities shall comply with the standards of the State, local health departments and water control agencies.

C. REFUSE DISPOSAL. The holder shall comply with all applicable Federal, State, and local requirements related to the disposal of refuse resulting from the use and occupancy authorized by this permit, including waste materials, garbage, and rubbish of all kinds.

D. CONSTRUCTION SAFETY. The holder shall carry on all operations in a skillful manner, having due regard for the safety of employees; and shall safeguard with fences, barriers, fills, covers, or other effective devices, pits, cuts, and other excavations which otherwise would unduly imperil the life, safety, or property of other persons.

E. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION. The holder shall take all measures necessary to protect the environment, natural resources, and the health and safety of all persons affected by the use and occupancy authorized by this permit, and shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring before, during, or after the term of this permit that causes or threatens to cause:

1. a hazard to the safety of workers or to public health or safety or
2. harm or damage to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, or their habitats, or any other natural resource). The holder shall immediately notify the authorized officer of all serious accidents which occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use and occupancy authorized by this permit is solely that of the holder. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations and activities of the holder for hazardous conditions or compliance with health and safety standards.

### **XIII. RESOURCE AND IMPROVEMENT PROTECTION**

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in connection with the use and occupancy authorized by this permit comply with all applicable Federal, State, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

B. WATER POLLUTION. No waste or by-product shall be discharged into water if it contains any substance in concentrations which will result in harm to fish and wildlife, or to human water supplies. Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water, that would result in harm to fish and wildlife or to human water supplies.

C. ESTHETICS. The holder shall protect the scenic esthetic values of the area under this permit, and the adjacent land, as far as possible with the authorized use, during construction, operation, and maintenance of the improvements.

D. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism or disorderly conduct and when necessary shall call in the appropriate law enforcement officer.

E. PESTICIDE USE. Pesticides may not be used to control undesirable woody and herbaceous vegetation, aquatic plants, insects, rodents, trash fish, etc., without the prior written approval of the Forest Service. A request for approval of planned uses of pesticides shall be submitted annually by the holder on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time an annual report was submitted.

Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be considered for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

F. ARCHAEOLOGICAL-PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of any and all antiquities or other objects of historic or scientific interest. These include, but are not limited to, historic or prehistoric ruins, fossils, or artifacts discovered as the result of operations under this permit, and shall leave such discoveries intact until authorized to proceed by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

G. PROTECTION OF HABITAT OF ENDANGERED, THREATENED, AND SENSITIVE SPECIES. Location of areas needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered

Species Act (ESA) of 1973, 16 U.S.C. 531 et seq., as amended, or as sensitive by the Regional Forester under authority of FSM 2670, derived from ESA Section 7 consultation, may be shown on a separate map, hereby made a part of this permit, or identified on the ground. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the permit holder.

If protection measures prove inadequate, if other such areas are discovered, or if new species are listed as Federally threatened or endangered or as sensitive by the Regional Forester, the authorized officer may specify additional protection regardless of when such facts become known. Discovery of such areas by either party shall be promptly reported to the other party.

H. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials at the site without obtaining the prior written approval of the authorized officer, and this approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after the issuance of this permit, shall be amended to include specific terms and conditions addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms and conditions shall be proposed by the holder and are subject to approval by the authorized officer.

I. SURETY BOND FOR USE OR STORAGE OF HAZARDOUS MATERIALS. If any hazardous materials are used or stored at the site, the holder shall deliver and maintain a surety bond in accordance with clause XIV.G.

J. CLEANUP AND REMEDIATION. Except with respect to any Federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either on site or in connection with the holder's activities, whether or not those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the site to the Forest Service free and clear of contamination.

K. CERTIFICATION UPON REVOCATION OR TERMINATION. If the holder uses or stores hazardous materials at the site, upon revocation or termination of this permit the holder shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the site covered by the permit is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the site, into surface water at or near the site, or into groundwater below the site during the term of the permit. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the site is in compliance with all Federal, State, and local laws and regulations.

L. ENVIRONMENTAL SITE REPORT. An Environmental Site Report prepared by the holder prior to issuance of this permit and documenting the known history of the site with regard to the storage, release, or disposal of hazardous materials is attached hereto and made a part of this permit as Exhibit B. Upon revocation or termination of this permit, the holder shall prepare another Environmental Site Report which shall document the environmental condition of the site at that time and describe any storage, release, or disposal of hazardous materials during the use and occupancy of the site by the holder. Both Environmental Site Reports prepared by the holder shall be subject to approval by the authorized officer. A comparison of the two reports shall assist the authorized officer in determining whether any environmental cleanup or restoration is required. Any cleanup or restoration shall be completed promptly by the holder in accordance with all applicable Federal, State, and local laws and regulations.

#### **XIV. MISCELLANEOUS PROVISIONS**

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or Resident Commissioner shall benefit from this permit either directly or indirectly, except when the authorized use provides a general benefit to a corporation.

B. REGULATING SERVICES AND RATES. The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services authorized by the permit. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices significantly different than those charged by comparable or competing enterprises.

C. ADVERTISING. The holder, in advertisements, signs, circulars, brochures, letterheads, and like materials as well as orally, shall not misrepresent in any way, either the accommodations provided, the status of the permit, or the area covered by it or the vicinity. The fact that the permitted area is located on the Inyo and Sierra National Forests shall be

made readily apparent in all of the holder's brochures and print advertising regarding use and management of the area and facilities under permit.

D. WATER RIGHTS. This authorization does not confer any water rights on the holder. Such rights must be acquired under State Law. Such rights must also be relinquished upon revocation or termination of this permit or, if there is a succeeding permit holder, the water rights must be transferred to that holder.

E. CURRENT ADDRESSES. The holder and the Forest Service shall keep each informed of current mailing addresses including those necessary for billing and payment of fees.

F. TIMESHARE. No commercial facilities or equipment authorized under this permit will be operated under a timeshare or interval ownership concept. All such facilities will be made available to the general public on a short-term rental basis.

G. BONDING.

The authorized officer may require the holder to furnish a bond or other security to secure all or any of the obligations imposed by the terms of the authorization or any applicable law, regulation, or order. The authorized officer may periodically evaluate the adequacy of the bond and increase or decrease the amount as appropriate.

H. HOLDER REPRESENTATIVE. The holder or a designated representative shall be present on the premises at all times when the facilities are open to the public. The holder will notify the District Ranger in writing who the representative will be.

I. HOLDER'S AND USERS' CONDUCT. Disorderly or otherwise objectionable conduct by the holder or those occupying the premises with the holder's permission shall upon proof thereof be cause for termination of this permit.

J. LIQUOR SALES PERMITTED. The sale of liquors, (or other intoxicating beverages), (beer and wine) is allowed under this permit. However, if conditions develop as a result of this privilege which, in judgment of the Forest officer in charge are undesirable, the sale of such (liquors, (or other intoxicating beverages), (beer and wine) shall be discontinued. In the event that this action becomes necessary, the holder will be informed in writing by the Forest service.

K. GAMBLING. Gambling or gambling machines or devices will not be permitted on National Forest lands regardless of whether or not they are lawful under State law or county ordinances.

L. SERVICES NOT PROVIDED. This permit is for the occupancy of land for the purposes stated and does not provide for the furnishing of road maintenance, water, fire protection, or any other such service by a Government agency, utility, association, or individual.

M. SUPERSEDED PERMIT. This permit supersedes two special use permits designated: **133 – Resort, MLD03055P, issued to John Summers, dated 02/01/03.**

N. APPEALS AND REMEDIES. Any discretionary decisions or determinations by the authorized officer are subject to the appeal regulations at 36 CFR Part 251, Subpart C, or revisions thereto.

O. PERMIT TERMINATION OF WITHDRAWN LAND. Not applicable.

P. SUPERIOR CLAUSES. In the event of any conflict between any of the preceding printed clauses or any provision thereof and any of the following clauses or any provision thereof, the preceding printed clauses shall control.

Q. NOXIOUS WEEDS (R5-D-9). The holder shall prepare, in cooperation with the Forest Service, a noxious weed plan for surveying, preventing, reporting, controlling and monitoring noxious weed populations on the authorized areas and within the holder's area of responsibility. These measures may include, where appropriate, equipment inspection for soil, seeds, and vegetative matter, equipment cleaning, and use of weed-free materials (soil, gravel, straw, mulch) and seed mixes. A current list of noxious weeds of concern is available at the Forest Supervisor's Office.

R. BEAR PROOF WASTE RECEPTACLES (R5-D10). The holder shall provide only bear-proof waste receptacles within the permit area and bear-proof food storage containers inside authorized improvements to inhibit attraction by wildlife and pets. In the event that full retrofitting of the entire site is not feasible within one operating season, a phased-in schedule will be specified in the Operations Plan agreed to by the authorized officer.

S. DRINKING WATER SYSTEMS (B38).

1. The holder, as the water supplier and owner or operator of the drinking water system, is responsible for compliance with all applicable Federal, State, and local drinking water laws and regulations for the operation and maintenance of a public water system. This includes, but is not limited to, developing, operating, and maintaining the system, and conducting drinking water testing and taking the appropriate corrective and follow-up actions in accordance with Federal, State, and any other applicable requirements. For the purposes of this authorization, public water systems are defined in the Safe Drinking Water Act, as amended (42 U.S.C. 300f et seq.), and in the National Primary Drinking Water Regulations, Title 40, Code of Federal Regulations, part 141 (40 CFR part 141), or by State regulations if more stringent.

2. When the permit holder operates Federally owned systems (for example, when the permit is authorized under the Granger-Thye Act), the holder shall meet additional requirements for public and nonpublic water systems consistent with FSM 7420. Requirements under FSM 7420 applicable to the permit holder are set forth in an appendix to the permit entitled "Operation of Federally Owned Drinking Water Systems" (Form FS-2700-4h-Appendix F).

3. For Federally owned systems, the holder shall notify and consult with the Forest Service within 24 hours or on the next business day after notification by the laboratory of a sample that tests positive for microbiological contamination. The holder shall notify and consult with the Forest Service within 48 hours of notification of a maximum contaminant level violation or an acute violation.

4. The holder shall retain all records as required by applicable laws and regulations. The holder agrees to make the records available to the Forest Service and to any other regulatory agency authorized to review Forest Service activities. Copies of microbiological test results for Federally owned water systems shall be forwarded monthly to the Forest Service by the 15th of the month following the sampling date. Copies of other required records for Federally owned systems shall be forwarded annually to the Forest Service within 15 days of the end of the operating season for seasonal sites or within 15 days of the end of the calendar year for year-round operations. The holder shall surrender all records for a Federally owned system to the Forest Service upon permit termination or revocation.

5. For Federally owned systems, the holder shall provide the name of the water system operator in writing to the Forest Service and notify the authorized officer within 72 hours of a change in personnel.

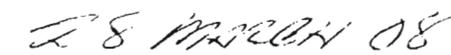
T. FIRE-CONTROL PLAN (F20). The holder shall prepare a fire plan for approval by the authorized officer which shall set forth in detail the plan for prevention, reporting, control, and extinguishing of fires on the authorized areas and within the holder's area of responsibility defined on an attached map. Such plans shall be reviewed and revised at intervals of not more than three (3) years.

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**THIS PERMIT IS ACCEPTED SUBJECT TO ALL OF ITS TERMS AND CONDITIONS**

**ACCEPTED:**

  
\_\_\_\_\_  
JOHN SUMMERS, OWNER

  
\_\_\_\_\_  
DATE

**APPROVED:**

  
\_\_\_\_\_  
JIM UPCHURCH  
FOREST SUPERVISOR, INYO NATIONAL FOREST

  
\_\_\_\_\_  
DATE